

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JOSE ALVARADO

Plaintiff,

-vs-

9:08-CV-1126

DR. S. RAMINENI, NEW YORK
STATE DEPARTMENT OF
CORRECTIONAL SERVICES

Defendants.

Thomas J. McAvoy, D.J.

DECISION and ORDER

This matter was referred to the Hon. George H. Lowe, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Rule 72.3(d) of the Local Rules of the Northern District of New York. In a Report-Recommendation dated March 15, 2010, Magistrate Judge Lowe recommended that the decision of the commissioner be affirmed. Plaintiff has filed objections.

When objections to a magistrate judge's Report-Recommendation are lodged, the Court reviews the record *de novo*. See 28 U.S.C. § 636(b)(1). After such a review, the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate [judge]." Id. The Court may also "receive further evidence or recommit the matter to the magistrate judge with instructions." Id. Thus, the Court reviews the instant

matter *de novo*.

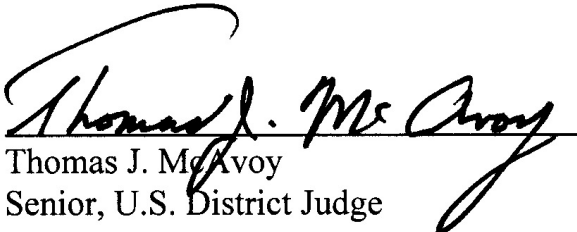
After reviewing the matter *de novo*, the Court agrees with the Report-Recommendation in its entirety. The decision of the ALJ was supported by substantial evidence, and the correct legal standard was applied.

Plaintiff has not alleged in his complaint a denial of access to a service, program or activity by reason of his disability, as required by the ADA and Rehabilitation Acts.

Consequently, the Report-Recommendation is adopted in its entirety. Plaintiff's claim against DOCS is dismissed as to the ADA and Rehabilitation Act without prejudice to Plaintiff to amend his claim.

IT IS SO ORDERED.

Dated: July 22, 2010


Thomas J. McAvoy
Senior, U.S. District Judge